

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY TROY DAVIS,

Defendant-Appellant.

UNPUBLISHED

May 22, 2012

No. 303716

Wayne Circuit Court

LC No. 10-006198-FC

Before: RONAYNE KRAUSE, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, and domestic violence, MCL 750.812. He was sentenced to a prison term of 9 to 20 years for the assault with intent to commit murder conviction and to time served for the domestic violence conviction. He appeals as of right. We affirm.

Defendant was convicted of assaulting his girlfriend, a woman in her late seventies, by plunging a butcher knife into her chest.

Although defendant argues on appeal that his constitutional right of confrontation was violated by the admission of a police report which indicated that defendant told a police officer that he had been drinking alcohol, defense counsel expressly stipulated to the admission of the report. Defense counsel's stipulation waived defendant's right of confrontation and extinguished any error. *People v Carter*, 462 Mich 206, 215-216, 219; 612 NW2d 144 (2000). Additionally, there were other witnesses that testified to defendant's intoxication and therefore the police report was cumulative.

Defendant also argues that defense counsel was ineffective for stipulating to the admission of the evidence. Because defendant did not raise this claim in a motion for a new trial or request for an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973), our review is limited to errors apparent from the record. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). To establish ineffective assistance of counsel,

[a] defendant must meet two requirements[.] . . . First, the defendant must show that counsel's performance fell below an objective standard of reasonableness. In doing so, the defendant must overcome the strong presumption that counsel's assistance constituted sound trial strategy. Second, the defendant must show that,

but for counsel's deficient performance, a different result would have been reasonably probable. [*People v Armstrong*, 490 Mich 281, 289-290; 806 NW2d 281 (2011).]

Defendant has not overcome the strong presumption that trial counsel stipulated to the evidence as a matter of trial strategy. If Officer Eddie Edwards had been called to testify, his observations of defendant and defendant's statement would have been admissible and cumulative to the other evidence presented. Counsel may have preferred to have this evidence presented through a more innocuous stipulation than through live testimony, which potentially could have been more damaging. Further, the record does not indicate that Officer Edwards could not have been produced if defense counsel was unwilling to stipulate. Therefore, there is no basis to conclude that defendant was prejudiced by the stipulation. Accordingly, defendant has not established that trial counsel was ineffective.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Henry William Saad
/s/ Stephen L. Borrello